

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Ashley, Paul Anthony
Serial Number:	10/621,935
Filing Date:	July 17, 2003
Art Unit:	2432
Examiner:	Dinh, Minh
For:	Method and system for automatic adjustment of entitlements in a distributed data processing environment

Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF

The paper responds to the Examiner's Answer, which was mailed July 9, 2010.

INTRODUCTION

Pages 3-7 of the Examiner's Answer restate *verbatim* the Final Rejection that is the subject of the appeal. The Appeal Brief addresses these points, and those arguments are hereby incorporated by reference. Thus, this paper addresses only the Examiner's "Response to Arguments," which is found on pages 7-10 of the Examiner's Answer.

This appeal involves only issues of alleged obviousness. The applicable legal standards are straightforward, but in the end "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" being asserted. *In re Kahn*, 441

F.3d 977, 988 (Fed. Cir. 2006) (quoted with approval in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Rejections based on §103(a) must rest on a factual basis, with these facts being interpreted without hindsight reconstruction of the invention from the prior art. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967); *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966) (warning against a “temptation to read into the prior art the teachings of the invention in issue.”)).

In considering grounds of rejection, “every limitation in the claim must be given effect rather than considering one in isolation from the others.” *See, In re Geerdes*, 491 F. 2d 1260, 1262-63 (CCPA 1974).

ARGUMENT

The Examiner has not presented a sustainable basis for the obviousness rejection as he has not furnished sufficient fact findings respecting the relied upon prior art disclosures coupled with detailed and rationale correlation thereof with all of the claim requirements

Group I – claims 1, 3, 5, 7-8, 10, 12, 14-15, 17, 19 and 21

The respective contentions regarding the scope and content of Kilkkila are not really far apart. Appellant contends that Kilkkila teaches defining a set of commands or a set of terminals that are operated by a set of commands and then restricting the command set upon one or more events or occurrences (Appeal Brief, at page 15); the Examiner contends that the reference teaches providing a set of user control commands, where the commands that can be executed depends on system utilization rate or system network load (Examiner’s Answer, at pages 7-8, stating that under these circumstances “only commands of the most important nature can be executed”). There is no dispute regarding the scope and content of Burke, and the Examiner does not appear to dispute the Appellant’s characterization of the Garg reference, although the

Examiner contends that he is only relying upon Garg for the “in response to” phrase, nothing more (Examiner Answer, at page 8).

The Board’s attention is directed to the claim language. Referring to claim 1, which is representative, there is a “set of authorized resources” that is a “subset of [a] set of physical resources” that a user is authorized to access. Based in part on “state information about the set of authorized resources,” a set of “entitled resources” is generated, where the set of entitled resources is itself a subset of the “set of authorized resources.” The claim goes on to require “preventing the user from accessing resources that are in the set of authorized resources but that are not in the set of entitled resources.”

The above-identified claim terms should not be interpreted in a vacuum, devoid of the context of the claim as a whole. *See Hockerson-Halberstadt, Inc. v. Converse, Inc.*, 183 F.3d 1369, 1374 (Fed. Cir. 1999) (“Proper claim construction ... demands interpretation of the entire claim in context, not a single element in isolation.”); *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003) (“While certain terms may be at the center of the claim construction debate, the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms.”). Here, the “resources” referred to throughout the claim are “physical resources.”

Both the Appellant and the Examiner agree that the “set of authorized resources” in Kilkkila – i.e., the “thing” being modified – is not a set of physical resources but, rather, just a set of commands within an access right profile (which itself is nothing more than a set of data). For this reason alone, the Examiner’s factual finding that Kilkkila meets this portion of the claim language is in error. Moreover, it is not disputed that, in Kilkkila, occurrence of the condition

that triggers a modification to the access right profile (i.e., the list of authorized control commands) does not limit access to the management terminal itself; rather, the system only appears to restrict or limit a user's ability to enter/execute certain commands from that terminal. Stated another way, access to the physical resource – the terminal – is not restricted. Thus, the further claim requirement of “preventing the user from accessing resources [the “resources” being the terminals identified in the profile]” is not met in the Kilkkila teaching either. The Examiner's finding to the contrary in the Final Rejection likewise is erroneous.

Here, at most the combined teachings of Kilkkila, Burke and Garg describe an access control method for a distributed system (Burke) having a set of commands or a set of terminals are operated by a set of commands (Kilkkila), and wherein the method responds to a client request (Garg) to restrict the command set upon one or more events or occurrences (Kilkkila). The claimed invention, however, includes additional subject matter as set forth below (emphasis supplied):

Claim 1:

“in response to receipt from a user of a request to access one of the set of physical resources, determining a set of authorized resources for which the user is authorized to access, wherein the set of authorized resources is a subset of the set of physical resources;

obtaining, by an entitlement server, state information about the set of authorized resources;

evaluating availability of the set of authorized resources by the entitlement server comparing the state information about the set of authorized resources against a configurable rule associated with one or more resources in the set of authorized resources;

in response to evaluating availability of the set of authorized resources using the configurable rule, generating, by the entitlement server, a list of a set of entitled resources for the user, wherein the set of entitled resources is a subset of the set of authorized resources; and preventing the user from accessing physical resources that are in the set of authorized resources but that are not in the set of entitled resources.”

Claims 8 and 11

“in response to receipt from a user of a request to access one of the set of physical resources, determining a set of authorized resources for which the user is authorized to access, wherein the set of authorized resources is a subset of the set of physical resources; obtaining state information about the set of authorized resources; evaluating availability of the set of authorized resources by comparing the state information about the set of authorized resources against a configurable rule associated with one or more resources in the set of authorized resources; generating a list of a set of entitled resources for the user in response to evaluating availability of the set of authorized resources, wherein the set of entitled resources is a subset of the set of authorized resources; and preventing the user from accessing physical resources that are in the set of authorized resources but that are not in the set of entitled resources.”

A *prima facie* case of obviousness must be shown with respect to the subject matter “as a whole.” See, 35 USC §103(a). The identified subject matter is not present in the combined teachings. For the above reasons, the Examiner’s Final Rejection with respect to the claims in Group I should be **REVERSED**.

Group II – claims 2, 9 and 16

The issue here comes down to claim construction and, in particular, the broadest reasonable interpretation of the phrase “sending an indication of the set of entitled resources to the user.” Claim construction, of course, must always precede the question of whether the claim, as properly construed, is met by the teachings in the cited reference or references.

Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003).

Appellant contends that the claim phrase should be construed consistent with the teachings in the specification, such as the text associated with FIG. 5B, which illustrates an embodiment of the feature. The Examiner interprets the phrase in a manner broader than the teachings in the specification, namely, to extend to an “indirect” or “implicit” notification that the Examiner contends necessarily occurs when a user is denied access to resources he or she is otherwise permitted to access in normal circumstances. (See, Examiner Answer at page 9).

Here, and with all due respect, it appears that the Examiner has “backed into” his claim construction using the cited prior art as a guide. This is improper. Moreover, the claim term is not merely the word “indication” – rather, it is the phrase “sending an indication of the set of entitled resources to the user” that should be construed, as it is error to construe one particular word devoid of its proper context. The only basis for the Examiner’s claim construction (which itself is not even present in the Final Rejection) is the explicit teaching in Kilkkila, but this is a circular (and incorrect) argument because claim construction must precede the question of whether the properly-construed claim reads on the reference.

Putting Kilkkila aside for the purposes of claim construction, it is clear that the broadest reasonable construction of the phrase consistent with the specification does not extend to the type of implicit notice suggested by the Examiner.

Moreover, once the proper claim construction is afforded, the Examiner's factual finding (that Kilkkila teaches the limitation) is exposed as erroneous. In this regard, the Examiner cites Kilkkila at column 4, lines 2-62. These portions, however, only describe how the access right profile is modified (and the effect of such modification). The claim language, however, requires the user be provided with an explicit indication "of the set of entitled resources." There is no such teaching in Kilkkila.

For the above reasons, the Examiner's Final Rejection with respect to the claims in Group II should be **REVERSED**.

Group III – claims 22-27

The threshold issue here is also claim construction. Claims 22, 24 and 26 recite that the set of resources are identified by Uniform Resource Identifiers (e.g., URLs), and further that the "preventing" function provides the user a web page without a particular URI for an authorized but non-entitled resource.

The Examiner contends (Examiner Answer, at page 10) that this phrase is "equivalent to a web page showing URIs of resources that a user can access." This argument is unsupported by the specification; rather, it is a claim construction that is based on the Examiner's reading of the Grainger reference. As noted above with respect to the Group II claims, claim construction must precede the question of whether the reference "reads on" the construed term. With all due

respect, the Examiner's claim construction, which uses Grainger (as opposed to the written description) as a guide, is legally erroneous.

The claim phrase here requires the web page identify the "authorized but non-entitled resources" but also do so without a "particular URI" being associated therewith. In other words, the phrase contemplates that the web pages shows the existence of the "authorized but non-entitled resource" but that the resource is unreachable – because it is "without a particular URI" (or link) that an end user can select.

In Grainger, the functions available to a particular client system of a particular customer depend on the role of the client system in the patent process, and the functions provided through Web pages 104 displayed to a client system are based upon the role of the client system in the patent process and as determined "as part of the set-up procedure." The claim language, however, is more specific; the URI for "an authorized [but non-entitled] resource" is not provided in the web page; in Kilkkila/Burke/Grainger, at most the access right profile command set would be modified but "based upon the role of the client system" and "as part of the set-up procedure" i.e., not "in response to" an access request that is for an "authorized [but non-]entitled resource."

Dependent claims 23, 25 and 27 recite that the set of resources may include a resource that one user (having a given status) may be entitled to access while another user (not having the given status) may not be entitled to access (even though, e.g., the same resource is otherwise available). These claims are likewise patentable for the same reasons advanced with respect to claims 22, 24 and 26. The Kilkkila/Burke/Grainger combination would not function "in response to" an access request that is for an "authorized [but non-]entitled resource."

For the above reasons, the Examiner's Final Rejection with respect to the Group III claims should be **REVERSED**.

Respectfully submitted,

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